Mr. G. Parameswaran Pillai:—

"I beg to second the motion and in doing so, I wish to make an observation, *viz.*, that a provision may be introduced in the Bill, whereby the Tahsildar may be empowered to compound the offences under the Bill. Under the Municipal Regulation Section 242), the Municipal Council may accept from any person against whom a reasonable suspicion exists that he has committed an offence against that Regulation or any rule or bye-law thereunder, a sum of money by way of compensation for such offence. In practice, the non-compliance with the provisions in the proposed law may be only such as would justify the receipt of a compensation, instead of putting the party to vexatious criminal prosecutions. With these words I beg to support the principle of the Bill."

President:—"This is a point which could be looked into by the Select Committee."

Mr. Subba Aiyar's motion was carried.

Mr. Subba Aiyar moved that the Bill be referred to a Select Committee consisting of Messrs. George, K. Parameswaran Pillai, G. Parameswaran Pillai, Subrahmanya Pillai and the Mover to report within two months.

Seconded by Mr. Rajaram Rao.

Carried.

THE LAND ACQUISITION REGULATION AMENDMENT BILL.

Mr. Subba Aiyar:—

"I beg to introduce a Bill to amend the Land Acquisition Regulation, XI of 1089. The amendment is only verbal. Section 6 of the Regulation which enables Government to assume any land for a public purpose runs as follows :—

"6. (1) Whenever it appears to the Government that any particular land is needed for a public purpose, a declaration shall be made to that effect over the signature of the Chief Secretary to Government.

(2) The declaration shall be published in the Gazette and shall state the taluk and pakuthi in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

The said declaration shall be conclusive evidence that the land is needed for such purpose."

The object of the Section is that if a declaration is published, it will be conclusive evidence that the land mentioned therein is required for a public purpose. As the wording stands and as the third paragraph is not numbered separately, it may be regarded as a Proviso to sub-section (2). It is therefore likely to be interpreted that the declaration is evidence that the land is required for the purpose mentioned in paragraph (2). As such a misconstruction is possible, the words 'for a public purpose' are proposed to be substituted for the words "for such purpose" in the last paragraph, the paragraph being numbered as (3). That is exactly how the British Indian Section stands. With these words, I beg to move that the principle of the Bill be affirmed".

Seconded by Mr. Rajaraja Varma.

Carried.

Mr. Subba Aiyar:—

"This Bill proposes to introduce only a verbal amendment, and I do not think it necessary to refer it to a Select Committee. I therefore move that the Bill need not be sent to a Select Committee".

Seconded by Mr. G. Parameswaran Pillai.

Carried.

THE GOVERNMENT LAND ASSIGNMENT BILL.

Mr. Subba Aiyar, in introducing the Government Land Assignment Bill, spoke as follows:—

"Sir,

The Bill proposes to regulate the assignment of Government lands. The object of the Bill is two-fold; *viz.*, (1) to make the existing Puduval Rules statutory and (2) to declare that the restrictions that may be imposed whenever any Government land is assigned should be legally valid and should not be considered invalid on grounds of public policy. These are the two main objects that the Bill proposes to achieve.

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With reference to the first, *viz.*, that the Puduval Rules should be made statutory, I wish to bring to the notice of the Council that there have been repeated observations from the High Court that the Puduval Rules are only administrative and are not statutory and that any irregularity in the observance thereof may not vitiate the assignment. Secondly, the fact that the rules are not statutory will also affect the period of limitation that will be applicable in some cases. I will explain this point a little more clearly. For over a quarter of a century, the High Court have been repeatedly holding that, if, in the assignment of any particular land, the Revenue officer goes into the question of title and decides that it is Government land and therefore liable to be registered even though other people may object, it is incumbent upon the person aggrieved by the decision to file a suit within one year from the date of the order, if he was a party or privy to such order. The above decision of the High Court was passed by a Full Bench and is reported in 11 T. L. R. 70. Subsequently, a case came up before the High Court, and there again the question was definitely referred to a Full Bench as to whether the rule of limitation should be one year or twelve years. The Full Bench again upheld the prior ruling in 11 T. L. R. 70 and said that, if it was necessary for an executive officer to decide whether a particular land was Government land or not, then, the rule of limitation that should be applied would be Article 10 and that therefore the suit would have to be filed within one year (12 T. L. R. 129). There have been subsequent decisions on the point not less than fourteen in number but all to the same effect. Lately another Full Bench sat over the question, reconsidered the former decisions and came to the conclusion that the order need not be set aside, on the ground that the Puduval Rules are merely administrative and that, if any land belonging to a private individual was registered as puduval land, the party might come within 12 years even though he was a party to the order, on the ground that Article 10 of the Limitation Regulation would apply only to such orders as were passed by executive officers under a law or under a rule having the force of law. This ruling is reported in 33 T. L. R. All the three judges in that case say that Puduval Rules are only administrative rules. This complaint has been brought against Government in various decisions. The Bill therefore proposes to make Puduval Rules statutory. It is not necessary for us to consider, which is the correct view of the law, the earlier rulings or the latest ruling. It may be an academical question and may not be necessary for us to decide. But the point that has to be borne in mind is whether, in a case of this kind, where a uniform current of decisions has been established by the High Court and on the strength of which parties began to act and vested interests have accrued, it is desirable that the law should be changed by the High Court. Of course, it is open to the High Court to take their own view. But, so far as parties are concerned, if the latest ruling is accepted, it is an unnecessary interference with vested rights. In the case of puduval decisions which had already become final in 1083 or 1084, the party having obtained vested interests might have put up costly buildings and made valuable improvements, and if he is to be told now on the strength of the above ruling that he would be evicted, it is hard. In such cases, the rule of *stare decises* ought to be applied and I am supported by the Privy Council rulings on the subject, *viz.*, that in all these cases the uniform current of decisions cannot be upset even supposing that the same is wrong. That being the case, the Puduval Rules should be declared statutory. Further, the trend of all the previous decisions which have been approved by many Chief Justices in our High Court is to make the orders in puduval proceedings final after the lapse of one year. In the 33 T. L. R. case, the late Chief Justice observes that it is for the Legislature to make the Puduval Rules statutory, so that Article 10 may become applicable.

Next as to the second object. Government, of late, have been issuing orders to register lands free of *tharavila* for the use of the depressed clases. Government have been registering lands in their names, but there was, I remember, a complaint last year in the Assembly by Mr. Daivathan that although the depressed classes got properties registered, influential persons managed to get them alienated by those people and that restrictions should be imposed on alienations. The idea is that, so far as the depressed classes are concerned, there must be a restriction as to the alienation of properties registered in their names. Once the land is registered, the right of alienation is one of the incidental rights of the owner himself. The restriction may not be upheld in a Court of law and will be declared invalid as being opposed to public policy. Unless there is a Statute declaring that such restriction may be imposed, the object of Government in registering lands free in favour of the depressed classes will be frustrated. It is with that view that the last Section is put in, empowering Government to impose any restrictions when assigning any land. With these words, I beg to move that the principle of the Bill be affirmed."

Seconded by Mr. Rajaraja Varma.

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Mr. Kayalam Parameswaran Pillai:—

"Sir,

The Bill, as explained by the learned Mover and as can be seen from an analysis of the Bill and the Statement of Objects and Reasons, is in furtherance of three distinct principles. One is that which is mentioned in the preamble of the Bill and for which the Bill purports to be chiefly introduced, *viz.*, to validate limitations and restrictions imposed upon lands assigned by Government. I am completely in agreement with this. It is highly necessary that Government should have power to impose such restrictions. I would only say that it should be wisely exercised. The Bill, however, seems to think of only restrictions against alienations imposed in assignment of lands made to certain depressed communities. I think the power ought to be exercised in other directions also. For instance, a condition may be imposed that the land assigned shall be cultivated and shall not be allowed to lie idle for any indefinite time. Or again, a condition may be imposed that the lands shall not be alienated to foreigners. I had occasion, at the Budget session of this Council, to animadvert on the Puduval policy of Government, and I venture to think that you also, Sir, agree that the complaints of the public in this respect are well-founded. I am glad, in this connection, to find that you are already taking action in the matter as is evident from the notice in the last Gazette publishing certain draft Puduval Rules. It will be seen from the list of Puduvals of over 100 acres furnished to this Council in answer to an interpellation of mine that there are considerable lands recently registered in the names of monied people and yet allowed to remain idle without any *permanent* cultivation. That list, of course, does not contain *all* Puduvals and even in regard to those over 100 acres recently registered, that list is admittedly not complete. As I said at the Budget session, the main object of Government should be to open out the lands for *cultivation*, and that, by the subjects of His Highness the Maha Raja. I hope that when this law, which no doubt is a restriction on the free use and free disposal of private property, is passed, the Government will wisely use that power to the benefit of the people—the people of *this* country.

The second principle or object, which, though not mentioned in the preamble, is yet expressly made mention of in the "Statement of Objects and Reasons", is to give legal force to the Puduval Rules. I entirely agree with this principle also. But the irony of it is that the Bill, as it stands, is practically a negation of this principle rather than an affirmation of it. The Puduval Rules even under the Bill have to be administered by the Revenue officers. But if they do not obey the rules or act up to them, what is the remedy? One should have expected that a remedy by a civil suit would have been provided for. But such a remedy is expressly denied by the Bill. That being so, where is the difference, I ask, between the old Puduval Rules which the learned Mover calls administrative rules and the proposed Puduval Rules which he would call statutory rules? In either case, the final authority is the Revenue officer whether it be the Peishkar or the Dewan. Whether the administrative rules are acted up to or not and whether the so-called statutory rules are acted up to or not have to be decided by the same set of officers—the Revenue and Executive officers. The Revenue subordinates are certainly bound to obey administrative rules, but only on pain of departmental punishment; and this, after all, is the only obligation for obeying the newly proposed statutory rules also. For, if any Revenue officer disobeys or neglects these statutory rules, it will come under the notice of only his Revenue superiors. In either case, the public do not get the guarantee of an open enquiry and disposal by an independent impartial tribunal, or of any appeal, at least as a last resort, to such a tribunal, so that, by these so-called statutory rules, we get only the name "statutory" and none of the advantages we are accustomed to associate with statutory guarantees or provisions. In fact these considerations would lead any one to doubt even the sincerity of the profession made in the Statement of Objects and Reasons. This is confirmed by the fact that the draft Puduval Rules published in the Gazette do not purport to be statutory or passed under any proposed law although a Bill which proposes to make such rules statutory is already before the Council. However, at this stage of the Bill, I would only express the hope that the proposed principle would be made real by necessary changes during the subsequent stages of the Bill.

The third principle or object of the Bill is, putting it bluntly, to set aside a judgment of the highest tribunal in the land, a Full Bench of the High Court, on a question of the period of limitation for instituting suits against Government. There is, Sir, a pernicious custom in this country for Government to go straight to the Legislature when they are defeated in the High Court by the people. And, of course, they can safely and boldly go to the Legislature, for they can never be defeated there, as they are sure there of their official *bloc*. I need not refer to the past instances of such appeal to the Legislature, for they are numerous. I would only mention that the present is also a typical

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instance; and even granting, for argument's sake, that the one year's limitation of suits against Government which the learned Mover wants to establish is reasonable, there is a great moral injustice in it, having regard to the immediate reasons which have impelled him to appeal to this Council, and for this reason I should strongly deprecate it. Coming, however, to the merits of the provision of one year's limitation, I think it is highly unreasonable as it stands at psesent. As I read that provision, *viz.*, Section 6, the suit against Government has to be brought within one year of the Government Order even in cases in which you have not been party to the proceedings and even in cases in which you had not any notice or knowledge of the proceedings. If behind your back and without even informing you, the Government decide your private land to be Government land and assign it over to a third person—even in such cases, the suit to establish your right has to be brought within one year. This is highly unfair and injurious to private rights, and I do not see any necessity for specially treating Government in this matter. No doubt, it may be said that provision is expressly made in Section 4 for giving notice and for intimation in writing. True. But suppose it is not obeyed. The Civil Court cannot consider that. Consideration of it is expressly taken away from the Court by Section 6. I take it that an order is a valid order as the Bill stands even if all the provisions of Section 4, or for the matter of that, of any other Section, are wholly ignored. I say it will be a valid order as it is not liable to be impeached in a Civil Court. That being so, the demand for curtailing the period of limitation of suits in every case to one year is highly objectionable and ought not be allowed. Probably, this much is not intended by the learned Mover. At any rate, that is my hope, and it is my further hope that the necessary changes will be introduced in later stages of this Bill.

There is one other matter that I should like to refer to at this stage of the Bill, *viz.*, the unlimited power reserved to Government to make rules. It may be that it is not possible to include all such rules in the Bill and that the rules themselves may have to be altered often. But seeing that the public would get no opportunity of discussing the rules even in this Council, I would ask you, Sir, to consider whether it is not possible to include at least the more important rules, what may be called the substantive rules, in the Bill itself, leaving out the purely procedure rules alone for the Government to frame. In any event, previous publication in the Gazette and invitation of public criticism and consideration of the same are highly necessary before the rules are finally passed by Government. I sincerely trust that proper provisions will be allowed to be made in this respect also during later stages of the Bill.

Subject to these observations, I support the principle of the Bill".

Mr. G. Parameswaran Pillai:—

"Sir,

I regret I cannot congratulate my learned friend, the Mover, on the introduction of this original piece of legislation. It appears to me that this measure is opposed to all fundamental principles of justice. It is opposed to well-known maxims of jurisprudence. It is opposed to the best interests of a vast section of the land-owning class. It encroaches upon vested rights of individuals. It aims at setting at naught the ordinary common law rights of the people and runs counter to a long current of decisions of the High Court and established rules of law and usage. The so-called merits of the Bill are completely eclipsed by the numerous evils resulting from the provisions thereof. Let us briefly, but carefully, examine the material provisions of this Bill and the principles underlying the same and see whether we are not justified in characterising the measure as a decidedly retrograde one.

The first part of the Bill defines Government land and proceeds to lay down the procedure to be followed before assignment of such lands. So far, it may appear the Bill is harmless.

The Bill then proceeds to lay down that no assignment shall take effect until a *patta* or other title-deed evidencing the assignment of the land is issued, and expressly states that, notwithstanding any rule of law or usage, the land shall have all the incidents of Government land till the issue of the *patta* or other title-deed. It further contemplates that, if the order of assignment is cancelled by the appellate or revisional authority, the *patta* or other title-deed, even if issued, shall cease to have effect. The Bill does not stop even here. My friend is not satisfied until it is laid down that no suit against Government shall be entertained in respect of any order passed under this Regulation. But he would concede that a suit may be filed on the ground that the land in respect of which such order has been passed is not Government land, but he would add a most unwelcome proviso, that the ordinary rule of limitation should not apply to such a case but that the suit should be filed within one year of the date of cause of action. The Bill would leave it to Government to determine by rules such important matters as prescribing the time available for appeal and revision, prescribing the restrictions, limitations and conditions subject to which an assignment could be made, which restrictions, etc., would be valid, and take effect according to their tenor notwithstanding any rule of law or usage. To remove

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all doubts in the matter, the Bill provides that all rules made under this Regulation shall have the force of law. These are briefly the material provisions in the Bill.

I would first deal with the provisions relating to civil suits and the period of limitation fixed within which such suits should be filed.

Civil suits are allowed only when the plea is that the land in respect of which an order has been passed under this Regulation is not a Government land, but is, for instance, a portion of a registered holding. But they have to be filed within one year of the date of cause of action. It is observed by my friend in his Statement of Objects and Reasons that "from before the date of the ruling in 12 T. L. R. 118, it was the established rule for over 25 years that all suits to set aside orders of Revenue officers in the matter of Puduval registries by persons who were parties to the proceedings, should be brought within one year from the date of the order. The ruling in 7 T. L. J. 169, has now declared that the decision of a Revenue officer that a particular land is Government land need not be set aside if the land is found to have been already registered and that a suit may be filed within twelve years. There can be little doubt that a shorter period of limitation is desirable in such cases". The only reason given by my friend for disturbing the ruling in 7 T. L. J. 169, is that "there can be little doubt that a shorter period of limitation is desirable in such cases". I ask from whose point of view is a shorter period desirable. Certainly not from the point of view of the person whose registered holding has been wrongly assigned away as Puduval.

My friend complains that the T. L. J. ruling above referred to will have the effect of divesting vested rights and the principle of *stare decisis* should be maintained. But, as a matter of fact, it is the present Bill that affects vested interests. For, as against the true owner, it cannot be said that anyone in whose favour a land which was in fact no Government land was registered by the Sirkar has obtained any valid title unless he has been in adverse possession of such land for the statutory period. The order of registry of land which was not *in fact* Government land being itself *ultra vires*, what is the title that vests in the registry holder by the mere fact of such registry by the Sirkar. The learned Mover has not given any satisfactory reason for prescribing a special period of limitation for such cases. The observation of my friend that from before the date of the decision in 12 T. L. R. 118, it has been the established rule for over 25 years that the period of limitation was only one year is misleading. My friend has evidently ignored the long current of rulings from 12 T. L. R. page 5, down to the present day, which recognise the principle that orders by Revenue officers passed not in pursuance of a Statute need not be set aside at all. Now my friend concedes that the Puduval rules are but administrative rules not having the force of law. In fact, it is on account of this characteristic of the Puduval rules that the Bill seeks to impress upon the rules to be framed thereunder the force for law. So then, the state of authorities on the point was far from satisfactory and therefore it was that their Honors of the High Court in a Full Bench instituted a thorough examination of them, affirmed the sound opinion and overruled the faulty one. It does not therefore help the learned Mover to quote the decision based on the 12 T. L. R. ruling which has now been abrogated. Apart from the rulings on the subject, is it desirable to perpetuate by legislation what has now been established to be a faulty ruling? Is the position advocated by my friend so very beneficial or is the position taken by the High Court so very injurious to the land-owning class? I am of opinion that the reverse is the case. The entire question has been fully discussed by their Honors in the Full Bench case reported in 7 T. L. J. One has only to read the masterly judgment of that eminent jurist, our late Chief Justice, to be convinced of the utterly untenable position that my friend, the Mover of this Bill, wants this Council to accept.

The effect of his Bill is this. A Tahsildar or Peishkar on the report and mahazar of a Provertical and his Tadasthars, decides that part of a registered holding is Puduval land and registers it in the name of a stranger. Under the existing law, even if such a person is a party, he need not set aside the order, he may treat it as a nullity, and he may treat it as *ultra vires* and *ab initio void*, and he may bring a suit for declaration of title within the ordinary period of limitation. But, under the Bill, unless the party aggrieved brings a suit to set aside the order within one year, his title is extinguished and he is divested of all rights. It is also immaterial whether the person against whom the order is passed by the Revenue officer is a party to the proceedings or not. Here the Bill goes even beyond the 12 T. L. R. ruling which my friend wants to restore by means of legislation. In other words, by aiming at giving the rules to be passed under this Regulation the force of law and by prescribing a short period of limitation, the Bill attempts at taking from individuals their rights of property in a manner that would otherwise be not possible. It is a legislative encroachment on private rights of property. At present, Puduval rules and other rules not passed in pursuance of any Statute are purly administrative, and, as remarked by the late Chief Justice, they stand on no higher footing than instructions that a great and just land-owner may issue to his agents to regulate their procedure in the matter of granting

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demises of his lands. The vagaries attendant on Puduval registries are so well-known that it would be positively dangerous to authorise Revenue officers to pronounce a binding adjudication of disputed titles which, unless set aside within the time limited, should for ever conclude the opposite party. The Settlement rules did not contemplate adjudication of titles save in so far as it was necessary for levying the proper assessment, and persons feeling aggrieved by such decisions were told to seek redress in Civil Courts; and only the ordinary period of limitation applies to them. Why a different rule should be adopted in respect of disputes as to whether a land is Government land or otherwise, I cannot understand. To me it appears that the scope of the Puduval rules is merely to regulate the registry of lands which are *in fact* at the disposal of the Sirkar. They do not contemplate in case of dispute adjudication on the question whether the lands are Puduvals or not, such as would conclude the parties in the same way as summary decisions by Civil Courts. Is it the intention of Government to promulgate rules authorising their officers to act as tribunals to adjudicate upon questions of disputed titles, so as to conclude the parties, unless they go to a Civil Court within the short period to quash the orders passed by such officers. Even the revised Puduval rules published in the latest Gazette do not reveal any such intention on the part of Government. But, if the Government contemplate any such step, permit me, Sir, to express strong public disapproval thereof. The reason is simple enough. Such a step would be subversive of the fundamental maxim of justice *that a man should not be judge in his own cause.*

If it is urged that the Government have sovereign rights over the Puduval lands, I must submit that the proper position of Government in the case of such lands is not that of sovereignty. As observed by the late Chief Justice, in its dealings with Puduvals and Porambokes, the Sirkar exercises not its *eminent domain*, but its *proprietory rights* given by the private law. In other words it merely acts *as owner*. When an officer of the Sirkar and therefore the Sirkar declares a certain plot of land to be Puduval and purports to deal with it as such, *prima facie* such declaration and act should be taken in law merely to be an exercise of *proprietory capacity* and not as an exercise of *sovereign authority*, judicially disposing of whatever dispute there may be between the Sirkar and a rival claimant. In these circumstances I would strongly urge that no change in the existing law is required in regard to the filing of civil suits and the law of limitation governing such cases.

Again, the provision in the Bill that no assignment shall take effect until a *patta* or other title-deed evidencing the assignment of the land is issued is mischievous. I do not find any provision in the Bill imposing upon Government any obligation to issue a *patta* within a particular period after satisfaction of requisite conditions. Suppose, for instance, there has been an order of registry in favour of A, and he has been asked to pay a certain *tharavila* at a certain rate. *Tharavila* is also accepted at that rate by competent authorities. Subsequently, however, for some reason or other, the land is ordered to be registered in favour of another or is ordered to be auctioned; or *patta* is issued to a different man. What is the remedy available to the aggrieved party? It should not be understood that I am speaking of hypothetical cases. I have myself come across such cases in Courts of law, and there have been reported decisions on such cases. According to this Bill, the aggrieved party cannot seek any remedy in a Civil Court at all. I ask, why could he not be allowed to go to the Civil Court? Again it is a misconception of the position of the Sirkar in regard to Puduval and other lands that accounts for the introduction of a sweeping prohibition of the nature contemplated by Section 6 of the Bill. As has been remarked by their Honors, Krishnaswami Rao C. J., and Kunjuraman Nair J. a grant by the Dewan of Puduval lands bears the strongest analogy to a lease granted by a private landlord to a tenant. The right of the Sirkar over unregistered Puduval lands resembles the right of a private land-owner over his lands. He may sell his land to any person he likes. But after he has entered into a contract with another to sell his lands to him and received the consideration money he ceases to have the right to sell the land to a third party and may be compelled to specifically perform the agreement to sell and to complete the transaction of sale. The case of the Sirkar in regard to Puduval lands is also treated on the same footing in 2 T. L. J. 502. These rulings which lay down ordinary principles of law and equity are sought to be set at naught by this new Bill. My friend has stated something about the backward communities and how the Bill aims at preventing persons from taking undue advantage of them. I must confess my inability to understand my friend's point of view in this respect. Government are at perfect liberty to grant as many lands as they like to such communities, but why should Government go out of their way and encroach upon the fundamental rights of individuals? It would be sinful to hold the backward communities responsible for a measure of this nature which divests the people of rights vested in them by law. The Bill gives us no idea as to the nature of the limitations conditions and

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restrictions which Government might impose on assignments of land. This is an extraordinary right exercised by Government. The Crown has no right at common law to create inalienable estates in lands which have not hitherto been inalienable by custom. My friend himself states that such provisions are opposed to public policy. It is perhaps, therefore, that Government wish to have a special legislation on the point. The Crown Grants Act upon which Section 8 of the Bill is modelled was passed under certain special circumstances which bear no analogy to the difficulties pointed out by the Mover of this Bill; and the speech of Sir Alexander Miller when he introduced the Crown Grants Bill makes it clear that it was intended to be applied in special cases of an exceptional nature. But according to this Bill the Dewan may by rules prescribe whatever conditions, limitations and restrictions he may please and they will have the force of law. The interests of the backward communities may well be safeguarded otherwise than by special legislation of this sweeping nature.

Before closing, however, I would put forward one suggestion for the favourable consideration of Government. Measures of this nature which contemplate wide, sweeping changes should not be sprung upon the public and the Legislature as a surprise. This Bill itself was published only recently in the Government Gazette. At least in future it would be desirable to foreshadow in the Popular Assembly or through Press Communiques the idea of Government to introduce measures vitally affecting the public weal. Public opinion ought to be invited, I mean, both official and non-official, and Government should shape the measures before introducing them in this Council so as to be in conformity with such opinion.

I have carefully gone through the Bill and have listened to the arguments of my friend, the Mover of the Bill. No necessity has been shown for the introduction of such a Bill which appears to be highly objectionable on principle and expediency. I regret therefore I cannot accept the principle of the Bill and would strongly urge this Council to vote for its rejection."

Mr. Raman Tampi :—

"SIR,

I very much regret I have to protest against the principle of the Bill. By the proposed law, Government contemplate imposing limitations on the free transfer of lands. At one time all the lands in Travancore were considered the property of the State and the tenants had no heritable or transferable rights therein. It was thought that the arrangement did not conduce to the prosperity of the holders of such lands. The Royal Proclamation dated the 21st Edavom 1040, in its preamble, conceded that the tenancy was not secure and that it was necessary to place the lands on a *much better footing* with a view to *enhance* their value. The Proclamation assured to the people that so long as the apportionment of tax was paid, the tenants might regard the lands fully a private, heritable, saleable and otherwise transferable property. A reading of the Proclamation shows that Government felt convinced that without such security of title, no ryots would be inclined to lay out labour and capital on their lands. There has been no complaint that the system has worked any disaster either to the Government or to the people. As such there is absolutely no justification for an enactment of this kind. The Statement of Objects and Reasons appended to the Bill is not convincing and does not furnish the basis for a sweeping legislation as the one proposed. No doubt in the case of the Pulayas and Parayas there are some complaints that they are not able to derive the full benefit of the concessions granted by Government. I know the reason for this. The Tahsildars and the Peishkars treat with scant courtesy the complaints made by these unfortunate people against the Revenue subordinates. In spite of the absolute freedom given to Parayas and Pulayas to enter public offices, in practice they are made to stand far out in the premises of the Taluk and Proverthy Cutcherries and these poor people have to engage intermediaries who are either Christians or Nairs. It is an open secret that registry cannot be secured without objectionable practices. This leads to debts being contracted by the Pulayas or Parayas and the intermediaries supplying the funds sometimes are unscrupulous enough to wrest the lands from the people whom the registries are ultimately intended to benefit. Let the Dewan Peishkars during their tours personally attend to this work ascertaining the wishes of these depressed people and there will be no trouble. Rather than give stringent orders to their servants and enforce scrupulous obedience of such orders, the Government propose to adopt a system of sale of lands opposed to all fundamental canons of the law of property. In British India the law regarding transfer of property is contained in Act IV of 1882. Section 10 says that a transfer of land subject to a condition absolutely restraining the transferee from alienating the land is absolutely void. This applies to all lands either of private owners or of Government. There is no other law in British India imposing such limitations. Under

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these circumstances it is not expedient for Government to reserve any power in respect of their lands which they propose to sell and avail themselves of a right which is opposed to public policy. The desire of the Government that a Court of law should not declare any restrictions or limitations made by them at the time of assignment to be invalid is objectionable in principle. As there is no statute on the point, the Courts, if they hold any particular limitation or restriction to be invalid, do so on considerations of equity and good conscience. One fails to see why this power vested in the Courts should be withdrawn. Similarly the proposal to alter the limitation of the period of suits to cancel an order of the Revenue authorities and to provide a one year's rule in all cases is thoroughly objectionable. The Ruling of the High Court referred to in the Statement of Objects and Reasons is a considered judgment of a Full Bench of the High Court and there should be very substantial reasons for going against the principle of the said judgment. The proceedings of the Revenue authorities are not conducted with that strict observance of rules of procedure one is accustomed to in a Civil Court, and it is not at all difficult to get things done behind the back of a person vitally concerned in the proceedings and to keep him ignorant of what is going on for one year. I am aware of a case in the Quilon District Court now pending against the Sirkar and another party claiming under the Sirkar (O. S. III of 1094). Six acres of land which were registered in the name of a man about the year 1060, were treated as Poramboke land and were re-registered in the name of another person about the year 1082—not a portion of the land, but the whole of the land included in that particular survey number. The original registry holder became aware of this and petitioned the Revenue authorities and eventually appealed to the Dewan. No answer was vouchsafed. A suit was instituted wherein the Sirkar said that the second registry was a mistake and that it had no objection to have the second registry quashed. In cases like this, the proposed alteration in the law will work real hardship. If the rule is limited at least to persons who were parties to the Revenue proceedings, it will be some mitigation. To apply the one year rule in all cases, whether the suitor was or was not a party to the Revenue Proceedings, is absolutely unjustifiable and no case therefor has been made out.

There is a good deal of discontent in the country and I respectfully ask Government whether it is necessary to add to this by the introduction of such contentious measures and laws, the utility of which is not well-established. I would therefore propose that this Bill be dropped. A measure limited in its scope for providing some favourable tenures for the benefit of the depressed classes, as a temporary measure, will quite meet the needs of the present."

Mr. John Nidiry :—

"I am also of opinion that the Bill is quite unnecessary. The object aimed at by the Bill may be achieved by some other manner. Of course, we are all sympathetic towards the backward classes; we all desire that land should be registered in their names, but that could be effected by some convenient executive arrangements without resorting to the Legislature. The restriction on alienation which is sought to be imposed with the aid of the proposed law is admittedly opposed to public policy. If there is a fear that in case lands are given to the backward classes, they will part with them, then, I think we can adopt some measures by which the lands may be leased to those people temporarily for 20 or 30 years. If the Government are satisfied that they will improve the lands, the lands may subsequently be registered in their names permanently. Further, it is a well-known fact that people have better confidence in the decisions of Civil Courts than in those of the executive officers. So, we should be very careful in adding to the powers of these officers especially in the matter of disputed rights as to ownership of properties. The Bill aims at doing away with the decision in 33 T. L. R. referred to by the Mover. My other friends who have already spoken have, I believe, shown convincingly how wise and correct the dictum contained in that decision is. The Mover has not satisfied us with any valid reason to come to a different conclusion. With regard to limitation also, I do not see any reason why we should reduce the period of twelve years to one year. It is a well-known fact to those who are conversant with Poramboke and Puduval cases that there are many ryots who are still in the dark as to the position of the land which is in their possession. They do not know whether the land is Poramboke or not. The only safeguard for such people is to be found in the decision in the 33 T. L. R. case; that is to say, the decisions passed by the Revenue officers behind their back or without their knowledge are *ultra vires*, and the parties are not bound to have them set aside by a Civil Court, within one year. If this Bill is passed into law, I fear, it will be a great hardship to the poor ryots who own lands adjoining Poramboke lands. In fact, we have come across many civil suits filed against Poramboke decisions, wherein the decisions of Courts have almost always been against Government. That shows that Government should be very careful in making a law against the sound principles that have been laid down by the High Court. My friends who have preceded me have dwelt at length on the subject and I am fully at one with them."

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Mr. Subba Aiyar :—

"I have to make a few observations in reply to the remarks of my non-official friends. I very much regret that the provisions of the Bill have not been correctly understood by them. It may be that my draft Bill is not clear. All the same, the objections put forward by my friends are untenable. In all seriousness may I ask my friends to state on what grounds a Puduval registry may be impeached in a Civil Court under the existing law? The only grounds on which this could be done are that the land does not belong to Government or that the land has been already assigned or ordered to be assigned. On no other grounds will a Court of law interfere with a registry. Yet my friends think that the provisions in the Bill are retrograde.

In the next place, the observations of some of my friends are directed against the Revenue officers. I may say that these Revenue officers are recruited from the same class of men; they possess the same qualifications and they have the same sense of responsibility as officers of other Departments. Under the Rules, the Tahsildar is bound to issue notice inviting objections to the registry of lands. The objections are enquired into and disposed of. There is an appeal from the order to the Peishkar, who is a very responsible officer. If the party is not satisfied with the Peishkar's order, he may move the Dewan to revise the order. This has been the practice all along in the matter of Puduval registry. Supposing we delete Clause 6 to which my friends object, where shall we stand? Article 10 will apply even then. This Article applies to the orders of all executive officers passed under a statute. If that is the case, where is the harm in making it clear by laying down the law in the Regulation itself? When the Tahsildar passes an order and when the Peishkar confirms it in appeal or when the Dewan upholds it in revision, we may presume that it is right, but in order that it may not be said that there is no civil remedy, the Clause says "You may have a right of suit, but you should bring that suit within one year." I do not think there is any harm in retaining the provision. My friends are afraid that the party may not know the nature of the orders which may be passed behind his back. This occurs in Civil Courts also. If the summonses are returned unserved and the party does not appear and contest the suit, *ex parte* decrees are passed In such cases, if there is fraud, the decree may be vacated by a fresh suit. If, however, no notice is issued or the provisions of the law are not complied with, it will be for the Court to consider the effect of the same.

With reference to the question when the title in the land may be deemed to have passed from Government, it is said that the *patta* should be issued and, if *patta* is issued, the contract becomes complete.

The late Chief Justice refers to two distinct sets of rulings in 33 T. L. R. With regard to Puduval registry, the current of decisions is uniform. In the matter of escheat enquiries, it was laid down that one year's rule would not apply. The late Chief Justice thought that on principle there could be no difference between the two sets of rulings, and he also said that it was for the Legislature to interfere. So far as the Puduval registries are concerned, the ruling has been uniform and there is no use of taking the analogy of other classes of cases.

Mr. Raman Tampi remarked that there is no precedent so far as the restriction of the right of alienation over property is concerned and that the Transfer of Property Act is against it. There is the Crown Grants Act. This Act was passed after the Transfer of Property Act was passed and it is intended to remove any doubt that may exist on account of the provisions of the Transfer of Property Act to the contrary.

Mr. Kayalam Parameswaran Pillai wanted to extend the scope of Section 8 to other cases than the one mentioned by me. It will be open to Government to consider that question. I recently read in the papers that in Ceylon there is to be an Ordinance imposing penal assessment on lands fit for raising food stuffs if they are not cultivated. Probably some such rule may satisfy Mr. Parameswaran Pillai in order that the production of food stuffs in the country may be increased and that speculation in the matter of registry may be checked. It is for the Government to consider these questions. But the Section is wide enough to inlcude such cases.

It is next suggested that the moment a decision adverse to Government is given by the High Court, we rush to the Legislature to have the ruling repealed. It is not so. When a current of decisions is overruled by a Full Bench, or when the High Court interpret a ruling in a way which was not contemplated by the Legislature, we try to get the law amended. The interpretation of the High Court may be right on the wording of a Section as it stands. It is the duty of the Legislature to interfere and make the meaning clear. This is not peculiar to Travancore alone. This is the practice everywhere. In Madras, there was a current of rulings on an Article of the Limitation Act as to foreclosure or sale. Some of the other High Courts took a contrary view. When the case went up

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to the Privy Council, Their Lordships, while observing that if the current of decisions was uniform they would not interfere, felt the necessity to go into the question, as there was a difference of opinion among the High Courts. The decision was against the Madras ruling. As that would involve great hardship in the Madras Presidency, the Legislature intervened, and Section 31 of the Limitation Act is the result. This case is reported in 30 Madras. As for the other points urged by my friends, they may be duly considered by the Select Committee."

President :—"I do not agree with my non-official friends when they say that the principle of the Bill is wrong. The Bill, as it is, is not perhaps perfect and it may be that in the matter of details, some changes—important changes too—may be found necessary. But that is a matter which can be considered by the Select Committee and this Council at the subsequent stages of the Bill. So far as the principle of the Bill is concerned, I think it is all right"

Mr. Subba Aiyar's motion was put to the vote and carried.

Mr. Subba Aiyar then moved that the Bill be referred to a Select Committee consisting of Messrs. Rangaswami Aiyangar, Rajaraja Varma, Anantanarayana Aiyar, Raman Tampi, G. Parameswaran Pillai, Subrahmanya Pillai and the Mover to report within two months.

Seconded by Mr. Rangaswami Aiyangar.

Carried.

THE ESTATES RENT RECOVERY REGULATION AMENDMENT BILL.

The Secretary read out a petition from the Edapalli Chief asking for an adjournment of the consideration of the Bill.

Mr. Subba Aiyar :—

"Evidently there is a misapprehension that the Regulation as a whole is going to be modified. The only thing that is sought to be introduced is to provide for the realisation of the losses that may be incurred by Government in connection with the recovery of the rent due to the estates, in a summary way. I do not think that any adjournment is necessary. I therefore beg to move that the Bill be taken up for consideration at once."

Seconded by Mr. Rangaswami Aiyangar.

Carried.

The consideration of the Bill being over, Mr. Subba Aiyar moved that the Bill be read on a future day of which due notice should be given.

Seconded by Mr. Anantanarayana Aiyar.

Carried.

THE ELECTRICITY BILL.

Mr. Subba Aiyar, in presenting the report of the Select Committee on the Electricity Bill, said :—

"Under rule 47 of the Rules for the conduct of business at the meetings of the Council, where a Select Committee decides that it is not necessary that their report and the Bill as revised by them should be published, copies of the same should be sent to the Members at least fifteen days before the meeting at which the Bill is taken up for consideration. This has not been done in the present instance. The report and the Bill were circulated amongst the Members only very recently. But the Bill is purely a non-contentious measure. I therefore beg to move that the Bill be taken up for consideration at once, the operation of the rules being suspended."

Seconded by Mr. Rangaswami Aiyangar.

The consideration of the Bill being over, Mr. Subba Aiyar moved that the Bill be read on a future day of which due notice should be given.

Seconded by Mr. Rangaswami Aiyangar.

Carried.

THE BILL FOR THE PREVENTION OF THE USE OF TOBACCO BY JUVENILES.

Mr. Subba Aiyar moved that the Bill for the Prevention of the Use of Tobacco by Juveniles be finally read and passed.

Seconded by Mr. Raman Menon.

Carried.

The Council adjourned at 4-35 P. M. and met again the next day at 12 noon, when all the Members who attended the previous day, excepting Messrs. Kayalam Parameswaran Pillai and Trivikramar Vasudevar, were present.

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